

promulgated under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.].

## (2) Status of final standard

The final standard developed under subsection (c) of this section shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

(Pub. L. 103-267, title II, § 205, June 16, 1994, 108 Stat. 727.)

### REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (d), is Pub. L. 92-573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6006 of this title.

## § 6005. Authorization of appropriations

For the National Highway Traffic Safety Administration to carry out the grant program authorized by this chapter, there are authorized to be appropriated \$2,000,000 for fiscal year 1995, \$3,000,000 for fiscal year 1996, and \$4,000,000 for fiscal year 1997.

(Pub. L. 103-267, title II, § 206, June 16, 1994, 108 Stat. 728.)

## § 6006. “Approved bicycle helmet” defined

In this chapter, the term “approved bicycle helmet” means a bicycle helmet that meets—

- (1) any interim standard described in section 6004(b) of this title, pending establishment of a final standard under section 6004(c) of this title; and
- (2) the final standard, once it is established under section 6004(c) of this title.

(Pub. L. 103-267, title II, § 207, June 16, 1994, 108 Stat. 728.)

## CHAPTER 87—TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION

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## § 6101. Findings

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose \$40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

(Pub. L. 103-297, § 2, Aug. 16, 1994, 108 Stat. 1545.)

### SHORT TITLE

Section 1 of Pub. L. 103-297 provided that: “This Act [enacting this chapter and section 9b of Title 7, Agriculture, and amending section 52 of this title] may be cited as the ‘Telemarketing and Consumer Fraud and Abuse Prevention Act’.”

## § 6102. Telemarketing rules

### (a) In general

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer’s right to privacy,

(B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers, and

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services.

In prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements.

**(b) Rulemaking**

The Commission shall prescribe the rules under subsection (a) of this section within 365 days after August 16, 1994. Such rules shall be prescribed in accordance with section 553 of title 5.

**(c) Enforcement**

Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices.

**(d) Securities and Exchange Commission rules**

**(1) Promulgation**

**(A) In general**

Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a) of this section, the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

**(B) Exception**

The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

- (i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a) of this section; or
- (ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

**(2) Application**

**(A) In general**

The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities

dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) of this section shall not apply to persons described in the preceding sentence.

**(B) Definitions**

For purposes of subparagraph (A)—

- (i) the terms “broker”, “dealer”, “transfer agent”, “municipal securities dealer”, “municipal securities broker”, “government securities broker”, and “government securities dealer” have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 78c(a) of this title;
- (ii) the term “investment adviser” has the meaning given such term by section 80b-2(a)(11) of this title; and
- (iii) the term “investment company” has the meaning given such term by section 80a-3(a) of this title.

**(e) Commodity Futures Trading Commission rules**

**(1) Application**

The rules promulgated by the Federal Trade Commission under subsection (a) of this section shall not apply to persons described in section 9b(1) of title 7.

**(2) Omitted**

(Pub. L. 103-297, §3, Aug. 16, 1994, 108 Stat. 1545.)

**CODIFICATION**

Section is comprised of section 3 of Pub. L. 103-297. Subsec. (e)(2) of section 3 of Pub. L. 103-297 enacted section 9b of Title 7, Agriculture.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 6103, 6104, 6105, 6107, 6108 of this title; title 7 section 9b.

**§ 6103. Actions by States**

**(a) In general**

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

**(b) Notice**

The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) of this section upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such

action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

**(c) Construction**

For purposes of bringing any civil action under subsection (a) of this section, nothing in this chapter shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

**(d) Actions by Commission**

Whenever a civil action has been instituted by or on behalf of the Commission for violation of any rule prescribed under section 6102 of this title, no State may, during the pendency of such action instituted by or on behalf of the Commission, institute a civil action under subsection (a) or (f)(2) of this section against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

**(e) Venue; service of process**

Any civil action brought under subsection (a) of this section in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

**(f) Actions by other State officials**

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a) of this section, such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

(Pub. L. 103-297, § 4, Aug. 16, 1994, 108 Stat. 1548.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 103-297, Aug. 16, 1994, 108 Stat. 1545, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6105 of this title.

**§ 6104. Actions by private persons**

**(a) In general**

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an

appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of \$50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 6102 of this title, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

**(b) Notice**

The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

**(c) Action by Commission**

Whenever a civil action has been instituted by or on behalf of the Commission for violation of any rule prescribed under section 6102 of this title, no person may, during the pendency of such action instituted by or on behalf of the Commission, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

**(d) Cost and fees**

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

**(e) Construction**

Nothing in this section shall restrict any right which any person may have under any statute or common law.

**(f) Venue; service of process**

Any civil action brought under subsection (a) of this section in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(Pub. L. 103-297, § 5, Aug. 16, 1994, 108 Stat. 1549.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6105 of this title.

**§ 6105. Administration and applicability of chapter**

**(a) In general**

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter.

**(b) Actions by Commission**

The Commission shall prevent any person from violating a rule of the Commission under section 6102 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

**(c) Effect on other laws**

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 103-297, § 6, Aug. 16, 1994, 108 Stat. 1549.)

## REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**§ 6106. Definitions**

For purposes of this chapter:

(1) The term “attorney general” means the chief legal officer of a State.

(2) The term “Commission” means the Federal Trade Commission.

(3) The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term “telemarketing” means a plan, program, or campaign which is conducted to induce purchases of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description, or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

(Pub. L. 103-297, § 7, Aug. 16, 1994, 108 Stat. 1550.)

**§ 6107. Enforcement of orders****(a) General authority**

Subject to subsections (b) and (c) of this section, the Federal Trade Commission may bring a

criminal contempt action for violations of orders of the Commission obtained in cases brought under section 53(b) of this title.

**(b) Appointment**

An action authorized by subsection (a) of this section may be brought by the Federal Trade Commission only after, and pursuant to, the appointment by the Attorney General of an attorney employed by the Commission, as a special assistant United States Attorney.

**(c) Request for appointment****(1) Appointment upon request or motion**

A special assistant United States Attorney may be appointed under subsection (b) of this section upon the request of the Federal Trade Commission or the court which has entered the order for which contempt is sought or upon the Attorney General's own motion.

**(2) Timing**

The Attorney General shall act upon any request made under paragraph (1) within 45 days of the receipt of the request.

**(d) Termination of authority**

The authority of the Federal Trade Commission to bring a criminal contempt action under subsection (a) of this section expires 2 years after the date of the first promulgation of rules under section 6102 of this title. The expiration of such authority shall have no effect on an action brought before the expiration date.

(Pub. L. 103-297, § 9, Aug. 16, 1994, 108 Stat. 1550.)

**§ 6108. Review**

Upon the expiration of 5 years following the date of the first promulgation of rules under section 6102 of this title, the Commission shall review the implementation of this chapter and its effect on deceptive telemarketing acts or practices and report the results of the review to the Congress.

(Pub. L. 103-297, § 10, Aug. 16, 1994, 108 Stat. 1551.)

**CHAPTER 88—INTERNATIONAL ANTITRUST ENFORCEMENT ASSISTANCE**

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6201.	Disclosure to foreign antitrust authority of antitrust evidence.
6202.	Investigations to assist foreign antitrust authority in obtaining antitrust evidence. <ul style="list-style-type: none"> <li>(a) Request for investigative assistance.</li> <li>(b) Authority to investigate.</li> <li>(c) Special scope of authority.</li> <li>(d) Rights and privileges preserved.</li> </ul>
6203.	Jurisdiction of district courts of United States. <ul style="list-style-type: none"> <li>(a) Authority of district courts.</li> <li>(b) Contents of order.</li> <li>(c) Rights and privileges preserved.</li> <li>(d) Voluntary conduct.</li> </ul>
6204.	Limitations on authority.
6205.	Exception to certain disclosure restrictions.
6206.	Publication requirements applicable to antitrust mutual assistance agreements. <ul style="list-style-type: none"> <li>(a) Publication of proposed antitrust mutual assistance agreements.</li> <li>(b) Publication of proposed amendments to antitrust mutual assistance agreements in effect.</li> <li>(c) Publication of antitrust mutual assistance agreements, amendments, and terminations.</li> </ul>